

12666 PL-11  
Mr. Siegel

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-193054

DATE: January 29, 1980

MATTER OF: Art Anderson Associates

DLG3740

**DIGEST:**

1. Agency's decision to include only one offeror within competitive range is upheld where protester's lower rating in most important area of evaluation, "Corporate Past Experience", could not be improved through discussions and cost savings shown in protester's proposal might not have been realized.
2. Award of contract while protest was pending is not improper where decision to proceed with award was made at higher level than contracting officer in accordance with applicable regulations.

Art Anderson Associates (Anderson) protests the award of a contract under solicitation Nc. N00140-78-R-1252, issued by the Naval Regional Contracting (formerly Procurement) Office, Philadelphia. The solicitation was for a cost-plus-fixed-fee level of effort contract for engineering and technical services extending over a period of four years in connection with the overhaul of the USS Saratoga (CV-60) at the Philadelphia Naval Shipyard. DLG037

Anderson initially protested the determination that its proposal was not within the competitive range. When a contract was subsequently awarded to CDI Marine Co. (CDI), Anderson protested the award as well. DLG03745

The contract which is the subject of this protest is " \* \* \* for engineering and technical services to accomplish design and alteration planning for the USS Saratoga (CV-60) in support of the CV-59 class Aircraft

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[Protest Involving Bid Rejection]

Carrier Overhaul program \* \* \*." Proposals were received from four companies: CDI, Anderson, M. Rosenblatt and Son (Rosenblatt) and J.J. Henry Co. (Henry). Only CDI was found to be in the competitive range.

Proposals were evaluated against the following evaluation factors, listed in descending order of importance:

1. Corporate Past Experience
  - a. Submitted samples of CV-59 class experience
  - b. Overall CV-59 class experience within last (3) years.
2. Personnel Experience/Resumes
3. Technical/Management Approach
4. Facilities
5. Cost.

A summary of the evaluation findings for the four proposals is shown below:

	<u>CDI</u>	<u>Anderson</u>	<u>Rosenblatt</u>	<u>JJ Henry</u>
Corporate Past Experience	Highly Acceptable	Marginally Acceptable	Marginally Acceptable	Unacceptable
Personnel Experience	Highly Acceptable	Acceptable	Marginally Acceptable	Marginally Acceptable
Technical Management Approach	Acceptable	Acceptable	Acceptable	Acceptable
Facilities	Acceptable	Acceptable	Acceptable	Acceptable

CDI's "Highly Acceptable" ratings were based on the evaluation team's findings that CDI's experience during the past three years included work in all phases of alteration planning, with nearly all of it for the CV-60 (USS Saratoga), and that CDI's proposal provided the greatest number of professional, technical and key personnel having CV-59 class experience including all phases of CV-59 class alteration planning and execution.

The evaluation team was less impressed with Anderson's "Corporate Past Experience" since neither that firm's submitted drawing samples nor its listed past contracts identified any significant corporate experience in the CV-59 class alteration drawing process. In the area of "Personnel Experience," the evaluation team found that although Anderson provided resumes in all labor categories as required by the solicitation, the majority of the recent CV-59 class experience was limited to certain phases of the alteration process, there were fewer working level personnel with CV-59 class experience, and CV-59 class experience in some phases was gained prior to employment with Anderson and therefore was not part of a corporate effort.

The evaluation team also concluded that all proposals were complete and representative of each offeror's ability to perform the solicited work and that additional information would not alter the positions of the offerors in relation to one another. The team recommended award to CDI on the basis that no offeror could bring itself up to the level of CDI.

However, the contracting officer, notwithstanding the recommendations of the evaluation team, requested an audit of the cost proposals of Anderson and CDI. These audits indicated that CDI's cost proposal (\$4,906,899) was realistic although amounts for overhead and general and administrative expenses were considered to be slightly overstated. The Anderson proposal (\$3,717,710), however, was considered to contain substantially understated direct labor costs.

The contracting officer thereafter decided to conduct negotiations only with CDI in view of CDI's technical superiority, the dubious validity of Anderson's cost proposal, and the increased costs involved in an award to Anderson which the Navy believed would result from needed increased shipyard in-house monitoring and support because of Anderson's minimal CV-59 class experience.

Anderson disagrees with the Navy's evaluation, asserting that the Navy did not give adequate weight to its capability and experience. In addition, Anderson argues that its costs are "competitive" and realistic.

We have stated that a proposal must be considered to be within a competitive range so as to require further discussion unless it is so technically inferior or out of line with regard to price that meaningful negotiations are precluded. Smoke Detectors, B-191459, August 1, 1978, 78-2 CPD 83; 48 Comp. Gen. 314 (1968).

Further we have also recognized that the determination of "competitive range", particularly as regards technical considerations, is primarily a matter of procurement discretion which will not be disturbed in the absence of a clear showing that such determination was an arbitrary abuse of discretion. 49 Comp. Gen. 309, 311 (1969).

The content and extent of discussions needed to satisfy the requirement for "meaningful" discussions is a matter primarily for determination by the contracting agency whose judgment will not be disturbed unless clearly without a reasonable basis. Telex Computer Products, Inc., B-190794, July 31, 1978, 78-2 CPD 78; Austin Electronics, 54 Comp. Gen. 60 (1974), 74-2 CPD 61. Here, the Navy decided that no meaningful discussions could be held with the other offerors because their proposals could not be brought up to the level of CDI's proposal. Although we carefully scrutinize decisions which result in a competitive range of one, Dynalec-tron Corp., B-185027, September 22, 1976, 76-2 CPD 267, we cannot conclude that the Navy's decision here was without a reasonable basis.

"Corporate past experience" not only was the most important evaluation criterion, it was the one in which there was the greatest difference in the scores of Anderson and CDI. The Navy was quite specific as to the kind of experience it considered necessary for the performance of this contract and what must be submitted in order to demonstrate that experience. In addition to a narrative description of its past experience, with emphasis on CV-59 class work, each offeror was to submit sample drawings demonstrative of its experience. These drawings were to be the product of a specified level of effort, include the integration of different engineering disciplines and reflect problems unique to aircraft carriers.

In its report to our Office, the Navy states:

"There is no question that AAA [Anderson] is well qualified with respect to the performance of advance planning, Alteration Development Support (Scopes) and Alteration Work Requests (AWR's). However, one of the major requirements of the subject solicitation was the preparation of detail drawings to be used in the actual performance of the overhaul work. To demonstrate corporate experience, the most important evaluation factor, offerors were required to submit samples of Basic Alteration Class Drawings (BACD) and Supplemental Alteration Drawings (SAD) developed by the offeror for CV-59 Class carriers. These samples were to include at least one integrated BACD package embracing naval architecture, mechanical, electrical and electronic disciplines and involving a minimum effort of 2,800 manhours. Offerors were also required to furnish at least two samples of integrated BACD packages involving less than 2,800 manhours. AAA was unable to submit an integrated BACD package for a CV-59 Class carrier. Furthermore, AAA was unable to submit any kind of integrated BACD package involving a minimum effort of 2,800 manhours. AAA was also unable to submit any samples of SAD packages for CV-59 Class carriers. The samples submitted were the work

product of Puget Sound, not the work product of AAA. CDI submitted completely acceptable samples and demonstrated past experience consisting of the preparation of more than 50 BACD and 20 SAD packages for CV-50 Class carriers, primarily the USS SARATOGA. \* \* \*

Anderson has not shown that this evaluation was unreasonable. In fact, in its response to the administrative report, Anderson recognizes that "our competitors may be able to demonstrate more general design experience and a greater number of design personnel \* \* \*. As a small business we cannot match their depth nor do we feel such depth is germane beyond responding to the requirements of this procurement." However, we believe the solicitation made a high degree of specialized experience "germane" by requiring offerors to show they possessed it through the submission of drawing samples.

Since this experience had to have been accumulated prior to the submission of the proposal, we agree with the Navy that additional discussions with Anderson could not be expected to improve that firm's rating for "Corporate Past Experience".

Consequently, even though the evaluators found Anderson to be "acceptable" or "marginally acceptable" in each individual technical rating category, the contracting officer, on the basis of the competition available in this procurement, i.e., the superior proposal of CDI, in effect determined that on a relative basis all other proposals, including Anderson's were not within the competitive range. We have approved this "relative" approach to determining the competitive range based upon the array of scores actually obtained by the offerors. B-171857, May 24, 1971. As we stated in Potomac Research Incorporated, April 29, 1975, 75-1 CPD 265:

" \* \* \* A proposal receiving a low score compared to the array of scores achieved by this proposal need not be considered within the competitive range. See 52 Comp. Gen. 382, 387 (1972). \* \* \* Whether the point spread

between competing proposals indicates significant superiority of one proposal over another depends upon the facts and circumstances of each procurement and is primarily a matter within the discretion of the procuring activity. 52 Comp. Gen. 686 (1973)."

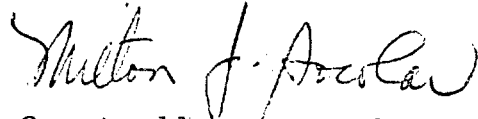
Anderson has also stressed the fact that its estimated costs were lower than CDI's. In this regard, it must be noted that the competitive range in a negotiated procurement encompasses both price and technical considerations. While either factor can be determinative of whether an offeror is in the competitive range, we have recognized that an offeror who submits an unacceptable technical proposal may be excluded from the competitive range without regard to its lower proposed costs. National Designers, Inc., B-181741, December 6, 1974, 74-2 CPD 316. In view of the Navy's conclusions as to the sufficiency of Anderson's past experience, there was no requirement for discussions with that firm even though its cost estimate was lower than CDI's. In this connection, estimated costs and proposed fees are not controlling in selecting a contractor for a cost-reimbursement type contract. Defense Acquisition Regulation § 3-803(c) (1976 ed.). Moreover, in this case the contracting officer did take Anderson's proposed costs into account and found that the savings suggested by Anderson's figures were not likely to be realized.

Anderson also has protested the award of a contract to CDI while Anderson's protest was pending with this Office. The decision to proceed with the award was made at a higher level than the contracting officer and in accordance with Defense Acquisition Regulation § 2-407.8 (b)(3) (1976 ed.), on the ground that an award had to be made promptly. Where such actions have been undertaken, the determination to proceed with an award prior to protest resolution is not subject to question by our Office. Robert Yarnall Pichie Productions, B-192261, September 18, 1978, 78-2 CPD 207.

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The protest is denied.

A handwritten signature in cursive script, reading "Milton J. Arnold".

For The Comptroller General  
of the United States